

MICHIGAN SUPREME COURT



Office of Public Information

contact: Marcia McBrien | (313) 972-3219 or (517) 373-0129

FOR IMMEDIATE RELEASE

MICHIGAN SUPREME COURT TO HEAR ORAL ARGUMENTS THIS WEEK

LANSING, MI, May 5, 2003 – The Michigan Supreme Court will hear oral arguments in two criminal cases on **May 8**; the Court will convene at **9:30 a.m.** Court will be held in the Supreme Court Room on the sixth floor of the Michigan Hall of Justice.

In *People v. Gonzalez*, the defendant was convicted of criminal sexual conduct, arson, and first-degree murder, based in part on testimony from a companion who admitted visiting the victim with the defendant on the evening of the crime. The defendant argues in part that the trial judge should have instructed the jury on the dangers of accomplice testimony, especially because the case turned on a “credibility contest” between the defendant and his companion.

Also before the Court is *People v. Zubke*. In that case, a defendant successfully sought dismissal of a state drug prosecution after pleading guilty to a federal drug conspiracy charge. The dismissal was based on a state public health statute that provides “If a violation of this article is a violation of federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.” The prosecution argues that the federal conviction does not bar the state charges, contending that the conspiracy and the underlying drug offenses are not the “same act.”

(Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys.)

Thursday, May 8, 2003

Morning session only

PEOPLE v. GONZALEZ (case no. 120363)

Prosecuting attorney: Janet M. Boes/989.790.5330

Attorney for defendant Daniel Jesse Gonzalez: Susan M. Meinberg/313.256.9833

Attorney for amicus curiae Prosecuting Attorneys Association of Michigan: William M. Worden/517.543.7500

At issue: Despite the absence of a defense request, was it reversible error for the trial court not to instruct the jury on the dangers of accomplice testimony? Was the witness in this case an “accomplice”? Was the credibility question “closely drawn”?

Background: On February 13, 1998, officers responded to a fire at an apartment building in Saginaw; they discovered Carol Easlick’s body in her apartment. It was determined that she was killed by blunt force to the head and strangulation, and that the fire was set intentionally. A State Police expert testified that sperm discovered in Easlick’s mouth, vagina, and anus did not match DNA from blood samples taken from Woodrow Couch, the companion of defendant Daniel Jesse Gonzalez. A blood sample taken from Gonzalez resulted in a four-probe match between the blood sample and the sperm donor of the DNA found in the vagina; the likelihood of another person having the same DNA markers was 18.7 million to one, the expert testified. Gonzalez was arrested and charged with first-degree murder, arson, and first-degree criminal sexual conduct. He maintained that he did not commit the crimes and was not present when the crimes took place. At trial, the prosecution presented 27 witnesses, including Couch. Couch admitted going to Easlick’s apartment with Gonzalez. Couch testified that Gonzalez later told Couch that Gonzalez returned to the apartment and had sex with Easlick, and then hit her with a baseball bat. Couch admitted that when he first spoke to the police, he told them that Gonzalez had been with him the entire evening, but didn’t inform them that he, Couch, had been drinking. A jury convicted defendant Gonzalez of all charges. Saginaw County Circuit Judge Lynda L. Heathscott sentenced him to 10 to 20 years for arson, 30 to 50 years for first-degree criminal sexual conduct, and life imprisonment for first-degree murder and felony murder. Gonzalez appealed, raising three arguments. First, he contended that the trial judge committed reversible error by not instructing the jury on the unreliability of accomplice testimony as to Couch. Gonzalez conceded that defense counsel did not ask for the instruction. Because the case was “closely drawn” and turned on a credibility contest between Gonzalez and Couch, however, the judge should have given the instruction without being asked, Gonzalez argued. Secondly, Gonzalez asserted that his defense counsel was ineffective because the attorney did not ask for the accomplice instruction. Finally, Gonzalez contended that there was insufficient evidence to support the first-degree murder conviction. In an unpublished per curiam opinion, the Court of Appeals stated that the lack of the accomplice instruction did not interfere with Gonzalez’s right to a fair trial. The court did vacate the criminal sexual conduct and arson convictions because it was unclear which crime was the basis for the felony murder conviction. Ultimately, the Court of Appeals directed the trial court to correct the judgment. Gonzalez appeals.

PEOPLE v. ZUBKE (case no. 122183)

Prosecuting attorney: Jeffrey Caminsky/313.224.5846

Attorney for defendant Timothy P. Zubke: Carolyn A. Blanchard/248.305.9383

At issue: The defendant pled guilty to a federal drug conspiracy charge while facing a state drug possession charge. Does the federal conviction bar the state charge? Is the federal conviction for the “same act” as the state charge?

Background: Defendant Timothy Zubke was under federal investigation for drug offenses and drug conspiracy; the conspiracy began in 1993 and continued until Zubke was indicted in August 2000. In July 2000, state officers, acting on a search warrant, seized 277 grams of cocaine from Zubke’s bedroom. On July 8, 2000, Zubke was charged in state court with possession with intent

to deliver 225-649 grams. The court record indicates that the state investigation may have been prompted by the federal indictment. In January 2001, Zubke pled guilty to one of the federal conspiracy charges. He then moved to dismiss the state charges, citing the controlled substances article of the Michigan's Public Health Code. The statute provides that "If a violation of this article is a violation of federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state." Zubke argued that his federal conviction was for the "same act" as the state charges. Wayne County Circuit Judge Thomas E. Jackson dismissed the state charges. In an unpublished per curiam opinion, the Court of Appeals affirmed Judge Jackson's ruling. The prosecution appeals, arguing in part that the state statute does not bar the prosecution of underlying substantive criminal charges when a defendant pleads guilty to a federal conspiracy charge.

– MSC –